



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

L. Preston Bryant, Jr.  
Secretary of Natural Resources

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David K. Paylor  
Director

Francis L. Daniel  
Regional Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
KINDER MORGAN OPERATING L.P. "C"  
FOR  
ELIZABETH RIVER TERMINALS  
Registration No. 60050**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Kinder Morgan Operating L.P. "C" for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, the Permit, and the applicable regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means the Kinder Morgan Operating L.P. "C" -- Elizabeth River Terminals, located at 4100 Buell Street in the City of Chesapeake, Virginia that operates a bulk materials transloading terminal.
5. Kinder Morgan" means Kinder Morgan Operating L.P. "C", a limited liability partnership, and its affiliates, partners, subsidiaries and parents. Kinder Morgan is a "person" within the meaning of Va. Code § 10.1-1300
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "Permit" means the minor New Source Review permit to construct and operate an Etibor (white powder Borax) and Alumina storage and transfer facility which was issued under the Virginia Air Pollution Control Law and the Regulations to Kinder Morgan on August 30, 2004.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 through 80.
10. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*), of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Kinder Morgan owns and operates the Facility located in the City of Chesapeake, Virginia. Part of the Facility is used for the transfer and storage Etibor and Alumina.
2. Kinder Morgan is subject to the Permit, which requires that particulate emissions from the material transfer of Etibor into the bulk storage section of Building # 3 to be controlled by the use of a fabric filter baghouse or DEQ approved equivalent, and shall be in operation whenever the bulk storage section of Building # 3 is receiving Etibor material from ship unloading operations.

3. On August 7, 2008 and November 10, 2008, DEQ compliance staff conducted Compliance Evaluations of the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

DEQ staff observed that Building #3 was receiving Etibor material from ship unloading operations without the use of a fabric filter baghouse.
4. Condition 5 of the Permit requires that particulate emissions from the material transfer of Etibor into the bulk storage section of Building #3 be controlled by a fabric filter baghouse, or DEQ approved equivalent, and shall be in operation whenever the bulk storage section of Building # 3 is receiving Etibor material from ship unloading operations.
5. On December 15, 2008, based on the August 7, 2008 and November 10, 2008 inspections and follow-up information, the DEQ issued a NOV to Kinder Morgan for the violations described in paragraphs C.3 and C.4, above.
6. Based on the results of the August 7, 2008 and November 10, 2008 inspections, the Board concludes that Kinder Morgan has violated Condition 5 of the Permit as described in paragraphs C3 and C4, above.
7. On January 14, 2009, DEQ amended the Permit allowing the use of a portable fabric filter or equivalent air pollution control device for the control of particulate emissions whenever the bulk storage section of Building #3 is receiving Etibor material from ship unloading operations.
8. On January 28, 2009, DEQ staff conducted a Partial Compliance Evaluation of the facility and verified that the violation described in paragraph C.3, above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and 1316, the Board orders Kinder Morgan and Kinder Morgan agrees to pay a civil charge of \$16,600.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104

Richmond, Virginia 23218

Kinder Morgan shall include its Federal Employer Identification Number (FEIN) [72-1073118] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Kinder Morgan good cause shown by Kinder Morgan, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order, Kinder Morgan admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Kinder Morgan consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Kinder Morgan declares it has received fair and due process under the Administrative Process Act, Va. Code and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Kinder Morgan to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Kinder Morgan shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Kinder Morgan shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kinder Morgan shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours and in writing within three business days, of learning of any condition above, which Kinder Morgan intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Kinder Morgan. Nevertheless, Kinder Morgan agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

(a) Kinder Morgan petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

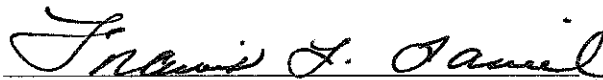
(b) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Kinder Morgan.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Kinder Morgan from its obligation to comply with any statute,

regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Kinder Morgan and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Kinder Morgan certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Kinder Morgan to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Kinder Morgan.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Kinder Morgan voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29<sup>th</sup> day of December, 2009.



Francis L. Daniel, Regional Director  
Department of Environmental Quality

Kinder Morgan Operating L.P. "C" voluntarily agrees to the issuance of this Order.

Date: 12/23/2009 By: Scott Shirk, TERMINAL MANAGER  
(Person) (Title)

of Kinder Morgan Operating L.P. "C".

**Commonwealth of Virginia**

City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 23<sup>rd</sup> day of

December, 2009, by Scott Shirk, who is

terminal manager of Kinder Morgan Operating L.P. "C" on behalf of  
Kinder Morgan Operating L.P. "C".

Jennifer Hudkins Darden  
Notary Public

7136063

Registration No.

My commission expires: March 31, 2011  
Notary Seal:

